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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,383	01/18/2000	Michael R. Bedford	68019	3100

7055 7590 08/31/2004

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EXAMINER

MELLER, MICHAEL V

ART UNIT PAPER NUMBER

1654

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/487,383

**Applicant(s)**

BEDFORD ET AL.

**Examiner**

Michael V. Meller

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-60 is/are pending in the application.
- 4a) Of the above claim(s) 44-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 44-60 remain withdrawn from further consideration by the examiner as being drawn to non-elected subject matter.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

Claims 30-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support for the phrase, "in the absence of the xylanase" in claim 30. In fact, xylanase is needed to operate the invention, thus it makes no sense to not include it in the claim.

The rejection is maintained. The invention requires one to have the xylanase present.

There is no support for "in chickens having bacterial infection". The specification does not make it clear that the chickens in fact have bacterial infections before they are treated.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 30, it is not clear what is meant by the phrase, "in the absence of the xylanase.....in the absence of the xylanase". It is not clear what applicant is trying to claim. It is apparent that applicant intends to claim that the method can use little or no antimicrobial drug, but the absence of xylanase makes no sense since one needs the xylanase to operate the process. Applicant is trying to claim the invention in such confusing terms. The phrase, "in the presence of an antimicrobial drug at a concentration that in the in the absence of the xylanase is not effective for treatment and/or prophylaxis of bacterial infection in chickens caused by bacteria..." is really

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confusing. Maybe applicant should just stick with treating with xylanase and in the absence of an antimicrobial drug, because the other language makes no sense.

***Claim Rejections - 35 USC § 102***

Claims 30-43 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,287,867, Bedford et al. ('055), or Bedford et al. ('678).

The references and their teachings are of record. The references clearly teach that xylanase is known to be used to treat bacterial infections.

Claims 30-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarkson et al. or Hansen et al.

See above remarks.

***Claim Rejections - 35 USC § 103***

Claims 30-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,287,867, Bedford et al. ('055), Bedford et al. ('678), Clarkson et al. or Hansen et al.

See above remarks. The references and their teachings are of record. It would have been obvious to use the specific amounts claimed since it is well within the purview of the skilled artisan to optimize the desired results through routine experimentation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'M. V. Meller', followed by a long horizontal line extending to the right.

Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM